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Proposed Constitutional Amendments, State of Nebraska

Primary Election May, 1996

by
A.L. (Roy) Frederick and J. David Aiken**

The 1996 primary election will be on May 14, 1996. At that time, Nebraskans will have an opportunity to consider four proposed amendments to the Nebraska Constitution. In each case, the Nebraska Legislature has given its approval for the proposed amendments to appear on the ballot. (Additional proposed amendments are expected for the general election in November, 1996, one or more of which may be placed on the ballot by petition of the people.)

To make an informed decision on the proposed amendments, voters should study each issue prior to election day. The purpose of this publication is to 1) present the "ballot language" (explanatory statement and ballot title); 2) offer background information; and 3) list arguments being made by both proponents and opponents for each of the proposed amendments.

Arguments for and against the proposed amendments were gleaned from the official record of hearings and floor debate in the Nebraska Legislature. No attempt was made to list an equal number of arguments for or against each amendment because, in a qualitative sense, some arguments may be more important than others.

The Cooperative Extension Division at the University of Nebraska-Lincoln presents this information as a public service. It is not the intent of either Cooperative Extension or the authors to support or oppose any of the amendments. Citizens should determine for themselves the relative merits of the arguments for and against each of these proposals.

Assistance from the offices of the Secretary of State and the Clerk of the Legislature is gratefully acknowledged.

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Proposed Amendment No. 1

Explanatory Statement

*A vote **FOR** this proposal would add a provision authorizing the Legislature to provide for the enforcement of mediation, binding arbitration agreements, and other forms of dispute resolution voluntarily entered into, and which are not revocable other than upon such grounds as exist at law or in equity for the revocation of any contract. This amendment would allow parties to voluntarily agree to waive a jury trial, narrow the scope of appeals and limit the use of formal rules of evidence and procedure.*

*A vote **AGAINST** this proposal would not add the new language referred to above authorizing the Legislature to enforce other forms of dispute resolution, including binding arbitration agreements voluntarily entered into.*

Ballot Title

A constitutional amendment to authorize the Legislature to provide for enforcement of mediation, binding arbitration agreements, and other forms of dispute resolution.

___ For
___ Against

Background Information

Mediation is a form of alternative dispute resolution where the mediator helps the parties negotiate a compromise to avoid litigation. Mediation is voluntary: A person cannot be required to mediate a dispute. Mediators are not judges, and do not "decide" disputes. Instead, mediators are neutral third parties trained in dispute resolution tech-



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niques. The mediator's responsibility is to persuade the parties to discuss their problems and lead the parties in negotiating a compromise solution. Mediation agreements signed at the conclusion of successful mediation sessions are legally enforceable contracts in Nebraska.

Arbitration is another form of alternative dispute resolution where the parties agree to resolve their differences through a private trial. The arbitrator may or may not be an attorney. Arbitration results are binding upon the parties. The arbitrator is both the judge and jury in the arbitration case. If parties participate in arbitration, they give up their right to a court trial. Similarly, an arbitration decision cannot be appealed except in cases of fraud or arbitrator misconduct.

Arbitration is often used by businesses to resolve legal disputes more quickly than is possible through civil litigation. In many Nebraska courts, one must wait up to a year to obtain a trial date. Contract clauses requiring that any contract dispute be resolved through arbitration rather than litigation are common business contract terms.

Arguments by Proponents and Opponents

Those who **support** the amendment make the following arguments:

1. Mediation or binding arbitration is faster and often cheaper than resolving differences through the court system. Neither party need be represented by a lawyer.
2. Mediation or binding arbitration is confidential. It does not create a public record.
3. The proposed amendment grants authority to the Legislature to provide enacting legislation. However, the Legislature could not write a law that would authorize a contract that was not entered into voluntarily. The public could decide for themselves whether or not to sign a contract that provides for mediation or binding arbitration.
4. Binding arbitration would be a relatively final form of justice. However, the Legislature could not deny the defenses of law and equity to apply to a contract that had an arbitration clause in it. In other words, defenses that have arisen in contract law, such as duress, undue influence, and fraud in execution would apply, as well as arbitrator misconduct.
5. Nebraska is one of only three states that does not permit predispute arbitration. It's been the norm in many other states for 40-50 years.
6. Arbitration agreements are not enforceable when they are "contracts of adhesion," that is, contracts offered on a "take it or leave it" basis such as a standard installment loan contract, a consumer credit application, a credit card application, or an insurance contract (policy). This provision in current Nebraska arbitration statutes is intended to protect consumers from unfair arbitration agreements.

Those who **oppose** the amendment make the following arguments:

1. If something goes wrong under binding arbitration, there is a narrow basis for appeal (duress, undue influence, fraud in execution, and arbitrator misconduct). In other words, the amendment could take away a citizen's right to appeal many things in court.
2. Certain kinds of arbitration contracts could be unfair because of pressure from interest groups or businesses. Consumers may be adversely affected.
3. Complicated arbitration cases will drag out, not unlike court cases.
4. There would be fewer rules to provide protection to citizens in binding arbitration than normal court proceedings.

Proposed Amendment No. 2

Explanatory Statement

*A vote **FOR** this proposal will provide that all bills and resolutions, and the amendments thereto, shall be read in their entirety when presented for final passage unless 3/5 of the members of the Legislature vote to dispense with the reading of particular bills, resolutions, and the amendments thereto in their entirety.*

*A vote **AGAINST** this proposal will continue the present provision requiring that all bills and resolutions, and the amendments thereto, be read in their entirety when presented for final passage.*

Ballot Title

A constitutional amendment to authorize the Legislature to vote upon final passage of a bill when the bill and all amendments thereto are printed, presented, and read at large unless reading at large is waived by three-fifths vote of the members elected to the Legislature.

____ For
____ Against

Background Information

Nebraska voters were asked to repeal final reading of legislative bills in 1970, 1976 and 1982. In each case, voters did not approve the proposed constitutional amendment.

Arguments by Proponents and Opponents

Those who **support** the amendment make the following arguments:

1. The amendment eliminates final reading only in cases where the Legislature, by a three-fifths vote

of the membership (30 votes), agrees to do so. It does not give a blanket exemption to final reading.

2. In the early days of the Nebraska Legislature, it may have been necessary to read bills aloud because not every member had access to written copies. This is no longer true.

3. This amendment neither eliminates any stage of legislative debate nor does it reduce the time for debate.

4. While it is often argued that final reading is a time for reflection before the final vote on a bill or resolution, reality does not match the premise. For example, some bills that appropriate millions of dollars take less than a minute to read. Other seemingly less important bills take hours.

5. Bills are read quickly to save as much time as possible. This makes it difficult—impossible, most would say—to follow what the clerk is saying.

6. If reflection is desirable before a final vote, perhaps allowing a specific period of time, e.g., 10 minutes, for recording a vote is the most efficient way to accomplish this objective.

Those who **oppose** the amendment make the following arguments:

1. Taking appropriate time for reflection is an important part of the legislative process. Final reading offers this opportunity.

2. Changing the process for approving laws and resolutions as provided for under the Nebraska Constitution should be done with the greatest of care. Generally speaking, amending the constitution is a much more serious business than altering a statute. In particular, that's the case when the constitutional amendment addresses the process by which legislative bills become law.

3. Nebraska voters have been asked to approve constitutional amendments that would have dispensed with final reading several times in recent years. None have been approved.

Amendment No. 3

Explanatory Statement

*A vote **FOR** this proposal will add a new section to the Bill of Rights of the state constitution detailing certain rights to be possessed by the victims of crime or their representatives or guardians, as defined by law, to include: (1) being informed of all criminal court proceedings; (2) the right to be present at the trial unless the court determines that the victim should not be in attendance if necessary for a fair trial for the defendant(s); and (3) to be informed of, be present at, and make an oral or written statement at sentencing, parole, pardon, commutation, and conditional release proceedings. In addition, it will be provided that these rights*

shall not be construed so as to deny or impair the enforcement of others provided by law or retained by crime victims; that the Legislature shall provide by law for the implementation of the rights detailed above; that there shall be no remedies other than as specifically provided by the Legislature for the enforcement of these rights; and that nothing in this new section shall be a basis for error in favor of a defendant in any criminal proceeding, or be the basis for providing standing to participate as a party to any criminal proceeding, or be a basis to contest the disposition of any charge.

*A vote **AGAINST** this proposal will result in not adding to the Bill of Rights of the state constitution a new section detailing rights to be possessed by the victims of crime, their implementation by the Legislature, and the remedies to be provided.*

Ballot Title

A constitutional amendment to prescribe that crime victims shall have certain rights. A crime victim or his or her guardian or representative would have the right to be informed of all criminal court proceedings, the right to be present at trial unless the trial court finds that keeping the victim out is necessary for a fair trial for the defendant, and the right to be informed of, be present at, and make an oral or written statement at sentencing, parole, pardon, commutation, and conditional release proceedings. The Legislature would be required to pass laws for implementation of such rights. There would be no remedies other than as specifically provided by the Legislature for the enforcement of such rights.

___ For

___ Against

Background Information

Twenty other states, including Colorado, Kansas and Missouri, now have victims' rights provisions written into their constitutions. A number of states have added these provisions in the past two years.

Arguments by Proponents and Opponents

Those who **support** the amendment make the following arguments:

1. Victims should be entitled to certain privileges, not just by law but as a constitutional right. It could boost morale for victims.

2. The proposed amendment does not limit the rights of those accused. It provides balance, however, so those who are victims of crime may be heard from as well.

3. The sequestration (second) provision simply allows judges to continue the long-term practice of

segregating witnesses during a trial when it is necessary to assure that their testimony isn't tainted by hearing the testimony of others.

Those who **oppose** the amendment make the following arguments:

1. The proposed amendment would clutter—even demean—the constitution. Much of what is proposed already is state law or could be enacted as a statute.
2. Simply because the public may vote for something does not mean that it's a good idea to put the proposal before them. (Many citizens might vote to reduce taxes, for example, without considering the consequences.)
3. The sequestration provision may make it easier for judges to close courtrooms to the public. The state Supreme Court probably would have to interpret this provision.

Proposed Amendment No. 4

Explanatory Statement

*A vote **FOR** this proposal will provide for the creation of the Tax Equalization and Review Commission by January 1, 1997, the members of which would be appointed by the Governor as determined by the Legislature, and whose term of office and compensation would also be determined by law. This commission would have jurisdiction over disputes regarding the state's revenue laws as provided by law, would have the power to review and equalize assessments of property for taxation, plus such other duties as the Legislature may provide for. Thus, a vote for this proposal would result in the elimination of the equalization powers now possessed by the Governor, Tax Commissioner, Secretary of State, Auditor of Public Accounts, and State Treasurer.*

*A vote **AGAINST** this proposal would result in the Tax Equalization and Review Commission not being created, would continue reference in the constitution to the Office of Tax Commissioner with jurisdiction over the administration of the state's revenue laws, and would continue the equalization powers presently possessed by the Governor, Tax Commissioner, Secretary of State, Auditor of Public Accounts, and State Treasurer.*

Ballot Title

A constitutional amendment to establish and provide powers and duties for the Tax Equalization and Review Commission and to eliminate the equalization powers of the Tax Commissioner, Governor, Secretary of State, State Auditor, and State Treasurer.

___ For
___ Against

Background Information

The Board of Equalization and Assessment currently has the following duties and powers: 1) equalizes the valuation of property for property tax purposes and 2) sets the variable motor fuel rate and special fuel percentage tax rate for each fiscal year. If this amendment is approved, the first of these duties would be transferred to the Tax Equalization and Review Commission.

Arguments by Proponents and Opponents

Those who **support** this amendment make the following arguments:

1. Statewide equalization of real estate values is necessary to ensure that the state's property tax system is fair. The Tax Equalization and Review Commission would provide equalization in a more efficient and effective manner than at present.
2. Equalization among counties is important when political subdivisions (e.g., school districts) cross county lines. Equalization also is important when state aid to political subdivisions is based in whole or in part on property valuations.
3. The current State Board of Equalization and Assessment has five members, four of whom are elected on a statewide basis. Thus, some decisions may be politically motivated.
4. Members of the Commission would be full-time professionals who are familiar with assessment processes and procedure. Current Equalization Board members have many other responsibilities.

Those who **oppose** this amendment make the following primary argument:

1. The State Board is accountable to the voters, more so than an appointed Commission would be.

In addition, the following issues have been raised by those who are not necessarily **proponents or opponents** of the amendment:

1. Initial operating details for the Commission were determined in LB 490, which became law in 1995. However, the Legislature could decide to alter these provisions after the constitutional amendment passes.
2. Under LB 490, the Commission will have broad authority over tax disputes. The tax commissioner and district courts would have less responsibility than under the present system.
3. The Commission may or may not help county assessors carry out their responsibilities more efficiently than under the present system.